

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HESSE,

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:21-cv-1931 WBS KJN P

ORDER TO SHOW CAUSE

Plaintiff is a state prisoner, proceeding through counsel. On November 3, 2021, plaintiff was ordered to complete service of process on defendants County of Sacramento, Phoebe Foo, Lynn Billett, Stephenye Burnett, Andrew Ho and Sonia Sanga within sixty days. On December 13, 2021, an answer was filed on behalf of all defendants. However, on February 10, 2022, a notice of errata was filed, and an Amended Answer by counsel for defendants Billett, County of Sacramento and Foo was filed. No proof of service or executed waivers of service have been filed for defendants Stephenye Burnett, Andrew Ho, and Sonia Sanga.

Federal Rule of Civil Procedure 4(m) provides as follows:

If a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Id.

1 Plaintiff's Rule 4(m) period did not commence until November 3, 2021, when the court
2 authorized service of process and provided summons. It is well past 90 days since plaintiff's Rule
3 4(m) period commenced. Indeed, more than 90 days have expired since the answering defendants
4 filed their amended answer. Nothing has been filed by plaintiff to address the issue of service of
5 process on defendants Stephenye Burnett, Andrew Ho and Sonia Sanga.

6 Therefore, this order to show cause constitutes notice to plaintiff that the undersigned will
7 recommend dismissal of defendants Stephenye Burnett, Andrew Ho and Sonia Sanga from this
8 action without prejudice unless, no later than thirty days from the date of this order, plaintiff files
9 either (1) proof that service of the summons and complaint was timely effectuated on defendants
10 Stephenye Burnett, Andrew Ho and Sonia Sanga, or (2) a declaration under penalty of perjury
11 showing good cause for failure to timely effect service upon them, accompanied by a motion for
12 leave to service process outside of the 90-day period.


13 All parties are relieved of their obligation to file status reports. (ECF No. 3.)

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Within thirty days from the date of this order, plaintiff shall show cause as set forth
16 above. Failure to timely respond to this order will result in a recommendation that defendants
17 Stephenye Burnett, Andrew Ho and Sonia Sanga be dismissed without prejudice. Fed. R. Civ. P.
18 4(m).

19 2. The parties are relieved of their obligation to file status reports. (ECF No. 3.)

20 Dated: August 1, 2022

21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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